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ABSTRACT

Intended for special education administrators in State Education Agencies (SEAs), the guide examines the development of monitoring plans to evaluate compliance with P. L. 94-142, the Education for All Handicapped Children Act, in terms of special education programs in adult and juvenile state correctional institutions. An initial section summarizes the legal and policy background, noting specific implications within P.L. 94-142 and its regulations as well as Section 504 of the Rehabilitation Act. A profile of state and local correctional and detention institutions within the criminal justice system is provided, followed by an analysis of trends in the characteristics of juvenile offenders and the incidence of handicapping conditions. Development of an annual monitoring plan in the SEA is detailed for three tasks which may be performed off-site: (1) selecting programs for monitoring; (2) establishing screening issues and targeting criteria; (3) collecting and analyzing targeting information. The final section pinpoints eight compliance issues for in-depth monitoring: right to education; child identification, location, and evaluation; individualized education programs; procedural safeguards; confidentiality; protection in evaluation procedures; least restrictive environment; and comprehensive system of personnel development. Implications of each issue for correctional settings are considered. (CL)

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# MONITORING THE SPECIAL EDUCATION PROGRAMS OF CORRECTIONAL INSTITUTIONS

## A Guide for Special Education Monitoring Staff Of State Education Agencies

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**Correctional/Special Education Training Project**
C/SET OFFICE: 305 Farmer Building,
Arizona State University, Tempe, Arizona 85287

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## PREFACE

The purpose of this Guide is to provide technical assistance to special education administrators in State education agencies in the development of monitoring plans to evaluate the compliance with P. 94-142 requirements of the special education programs of adult and juvenile State-operated correctional institutions.

The Guide outlines specific procedures for developing an annual monitoring plan, identifies eight important compliance issues particularly susceptible to off site monitoring, and discusses in detail the types of monitoring information dictated by the unusual or unique aspects of the correctional education setting. This discussion closely tracks the compliance issue/subissue structure created in the State Educational Agency Monitoring Guide used by the Office of Special Education Programs, U.S. Department of Education.

The Guide is organized into four major sections:

- Section I identifies and summarizes the legal requirements applicable to both state education agencies and the education programs which establish, on the one hand, the responsibility for general supervision and regular periodic monitoring by the SEA and, on the other hand, the obligation on the part of agencies operating correctional education programs to provide a free, appropriate public education to handicapped children and youth in custody.

- Section II provides a profile of state and local correctional and detention institutions within the criminal justice system, including recent trends both in terms of the overall population and the incidence rates within the population of handicapped children and youth.

- Section III outlines a procedure for use by SEA monitoring staff in developing an annual plan by which specific correctional education programs can initially be monitored off site and procedures for selecting particular correctional education programs for indepth monitoring activities.

- Section IV recommends compliance issues that can be targeted for general off site monitoring and discusses both the unique compliance issues which may arise within the correctional setting and the implications of these issues for effective data collection and analysis. A brief discussion of the development of a data collection plan and monitoring strategies for each indepth monitoring activity completes the section.

### Assumptions

The Guide is predicated upon four important assumptions about the SEA monitoring process which may not be accurate for all states.

First, it assumes that SEA special education staff are actually responsibl for planning and conducting the P.L. 94-142 monitoring activities related to state-operated programs.

Second, it assumes that the state education agency is currently using (or seeking to develop) management-by-information strategies for its day-to-day operations which would permit the SEA to select a subset of educational programs within the state for indepth monitoring and to target specific compliance areas for exploration and analysis. These selective and focused monitoring approaches are, of course, strongly recommended in lieu of the across-the-board, compliance check-list type of alternative. Because of the limitations on the number of SEA monitoring staff who can be hired and the increasing complexity of compliance issues, this latter approach, which was probably crucial in many states during the first few years of P.L. 94-142 implementation because of the "presence" it created at the local level, has become increasingly impracticable and inefficient.

The third assumption underlying the Guide is that SEA monitoring and technical assistance strategies are likely to be interwoven and that, as a result, SEAs must become increasingly adept and pro-active in translating P.L. 94-142 requirements for particular types of state-operated educational programs into standards which are "sensitive" to the "host" environment.

The fourth assumption is that, in addition to federal requirements, some state statutes require the annual approval and/or monitoring by the state education agency of all correctional education programs. These requirements are not addressed by this Guide.

## Preparation

This Guide was prepared by Martin Gerry of M.H. Gerry & Company, Washington, D.C., under contract with the U.S. Department of Education, Special Education Programs. Invaluable assistance was provided by the National Association of State Directors of Special Education; the Council for Exceptional Children; and many administrators and staff of the Louisiana Department of Education, Louisiana Department of Corrections, Ohio State Department of Education, Ohio Department of Rehabilitation and Corrections, Ohio Youth Commission, District of Columbia Department of Human Services, District of Columbia Department of Corrections, Rehabilitative School Authority of the Commonwealth of Virginia, Virginia Department of Corrections, New York City Board of Education, New York City Department of Corrections, the National Center for State Courts, and the Mid Atlantic Regional Resource Center of the George Washington University; staff of the Division of Assistance to States, Office of Special Education Programs, U.S. Department of Education; and Allen Dittman, U.S. Department of Education.

While not specifically intended for their use, we hope this Guide will also prove helpful to the thousands of dedicated education professionals who pursue daily the extraordinarily challenging task of providing appropriate education to incarcerated children and youth.

MONITORING THE SPECIAL EDUCATION PROGRAMS
OF CORRECTIONAL INSTITUTIONS:
A GUIDE FOR MONITORING STAFF OF
STATE EDUCATION AGENCIES

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I

# LEGAL AND POLICY BACKGROUND

## The Statute

The Education for All Handicapped Children Act of 1975 (P.L. 94-142) requires that all states make available to handicapped persons of school age a free, appropriate public education. Section 612(6) of the Act explicitly extends this requirement to children receiving educational services in institutional settings by expanding the scope of the Act to include "all education programs within the state or local agency." This Section also introduces a new concept of a central state responsibility in the education agency to exercise "General supervision" over the special education programs of all other agencies in order to ensure that all federal and state standards are met, and provides that the state education agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the state... shall meet "education standards of the state education agency."

While most of the public attention concerning the implementation of the Act has been focused on the services provided by the local public schools, there remains the question of how to monitor appropriately the education programs operated by other state agencies for the institutionalized minority.

## The Regulations

The Regulations issued by the U.S. Office of Education on August 23, 1977 (45 CFR 300a) describe in greater detail both the agencies to be supervised and the nature of the general supervision responsibility. Section 300a.2(b) extends the general supervision responsibility "to all political subdivisions of the state that are involved in the education of handicapped children" whether such subdivisions receive P.L. 94-142 funds or not, and specifically includes state correctional facilities.

During the last 10 years, the U.S. Department of Justice and scores of private litigants have brought suit against state-operated correctional facilities (both juvenile and adult), asserting violations of the Eighth Amendment prohibition against the infliction of "cruel and unusual punishment." These cases, orginally targeted on physical abuse, living conditions, recreational opportunities, and health care, have expanded rapidly during the last four years to cover matters such as the access of handicapped inmates to appropriate education services.

Although the education programs within state correctional facilities were not directly referenced in the Regulations, Section 300a.2 provides that "the

provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children." These would include: "...(4) State correctional facilities." No other specific reference to correctional facilities or their educational programs appears in the regulations. Accordingly, the education programs of correctional facilities are subject to all of the requirements of Subparts C, D, and E of the regulations.

On April 3, 1980, the Office of Special Education ("OSE", now redesignated as "OSEP"), in connection with the issuance of new regulations (the Education Division General Administrative Regulations or "EDGAR") under the General Education Provisions Act (20 U.S.C. 1221f), repealed the compliance monitoring at 45 C.F.R. 601 and replaced it with new provisions which require that state educations agencies adopt and use a method of administering their special education programs which includes:

> "(i) Monitoring of agencies, institutions, and organizations responsible for carrying out each program and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law;
>
> * * *
>
> "(v) The correction of deficiencies in program operations that are identified through monitoring or evaluation." (34 C.F.R. 76.101(e)(3)

In addition, the EDGAR regulations contain provisions which require each SEA to adopt complaint procedures that contain several specified minimal components (34 C.F.R. 76.780-782). Finally, the regulations empower state education agencies (SEAs) to require that local education agencies (LEAs) and state-operated special education programs (SOPs) maintain sufficient records and submit to the SEA necessary reports to demonstrate their compliance with program requirements (e.g., the requirements in Subparts C, D, E and F of P.L. 94-142 regulations, 34 C.F.R. 300.300 - 300.653).

In November 1981, the Compliance and Enforcement Branch of the Division of Assistance to States, Special Education Programs, Department of Education issued a "State Education Agency Monitoring Guide", which set forth the criteria to be used by the Branch in evaluating the compliance of state education agencies with the EDGAR monitoring requirements, state correctional institutions:

> "1.3 <u>Monitoring of EHA - B Provisions:</u>
>
> Has the SEA implemented a monitoring system which assures that monitoring with approved format procedures is going on in <u>all</u> other agencies providing services to handicapped children, i.e., Corrections, Social Services, etc."

As of November, 1984, OSEP has issued no policy guidance specifically concerned with the practical application of the provisions of the regulations to the unique educational environment within state correctional institutions.

Section 504

While not related directly to SEA monitoring responsibilities, education programs in correctional facilities operated by other public agencies are covered directly by the requirements of Subpart D of the regulations (34 C.F.R. 104) to implement Section 504 of the Rehabilitation Act (29 U.S.C. 794). These regulations, which apply directly to any education program recipient which receives or benefits from any federal financial assistance from the U.S. Department of Education (whether or not related to special education), track closely the requirements of P.L. 94-142 and require the provision of a free, appropriate public education to handicapped children and youth of school age. In addition, the 1978 Amendments to the Rehabilitation Act excluded these non-discrimination guarantees to all Federally operated programs, including the educational program of the Federal Bureau of Prisons, U.S. Department of Justice.

II

## PROFILE OF CORRECTIONAL INSTITUTIONS

Best estimates place the number of children and youth (under the age of 21) committed to juvenile and adult correctional institutions at more than 150,000. 3/ In addition, each year another 300,000+ persons in this age group are confined in pre-trial detention facilities and jails. A study of the nationwide juvenile corrections population sponsored by the Law Enforcement Assistance Administration estimated that 34 percent of the children in custody were functionally illiterate. 4/ A 1979 review of research studies conducted by the Council for Exceptional Children revealed an unusually high prevalence of mental retardation and learning disability within the populations of correctional facilities. 5/ These findings are supported by a study by the General Accounting Office of learning problems of juvenile offenders in two states (1976-1977). 6/

The population of children and youth can be separated into two categories: juvenile offenders (in most states, persons under the age of 18) and youthful offenders (in most states, persons between the ages of 18 and 22).

The age of offenders generally determines whether they will be handled within the juvenile or adult criminal justice system. States define the maximum age below which an offender is considered a juvenile differently. While some states might consider a 17 year old person to be a juvenile, other states may provide for regular criminal court jurisdiction for persons 17 years of age who are accused of committing certain offenses. In addition, several states have a "Youthful Offender" category for persons adjudicated in criminal courts who may be above the age limit for juveniles but below a specified upper age limit (e.g.22). Such persons may be eligible for special record sealing procedures and may be committed to special correctional facilities. In summary, all youthful offenders are asigned to the adult criminal courts and most, but not all, juvenile offenders are assigned to the juvenile justice system.

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3/ The Sourcebook of Criminal Justice Statistics, U.S. Department of Justice, 1978 (for juvenile offenders), and estimates made by MHG of the projected youthful offender population based on data collected in several states.

4/ L.E.A.A. No. 73 Ed-99-0012, 1975.

5/ The Council for Exceptional Children, "Policy Issues and Implications on the Education of Handicapped Adjudicated Youth", Scottie Higgins, September 1979.

6/ General Accounting Office, "Report to the Congress, Learning Disabilities: The Link to Delinquency Should Be Determined, But Schools Should Do More Now." No. GGD-76-97, U.S. GPO, March 4, 1977.

One unusual characteristic of the juvenile offender population is the fact that approximately 18 percent of the children and youth assigned to the juvenile justice system enter the system by means other than arrest. These juveniles are referred to juvenile courts or detention facilities by parents or relatives, schools, probation officers and public and private social agencies.

Of the remaining 82 percent, more than one-third are released by the arresting agency prior to a hearing. In turn, most of the persons referred to juvenile court jurisdiction are either placed on probation or dismissed from custody by the juvenile court. Fewer than 10 percent of those persons under 18 who enter the criminal justice system are ultimatley sentenced (or committed) to juvenile correctional institutions.

Correctional Facilities

The facilities to which juvenile and youthful offenders are committed by the juvenile justice system or the adult criminal courts include: (1) state and local juvenile correctional institutions directly administered by state and local governments; (2) adult correctional institutions directly administered by the state or under state supervision; (3) pre-trial detention centers and jails administered by state and local law enforcement agencies; (4) publicly and privately operated facilities which are often subject to state and local government supervision and may receive substantial government funds. Each of these types of facilities will be discussd separately.

Juvenile Correctional Institutions. Juvenile correctional institutions exist in each state for "sentenced" (or post-disposition) juvenile offenders. These institutions are secure facilities (ranging from unfenced youth camps to maximum security prison type settings), and in many states different correctional institutions are assigned different security classifications. Thus, in a state system there might be one maximum security juvenile correctional institution, two or three medium security facilities, and one or two minimum security camps or ranches.

In most states, a system of juvenile correction institutions is operated by a separate state agency or by a discrete organizational component of an overall state corrections agency. In a few states, city and county agencies also operate juvenile correctional institutions. Assignment to a particular juvenile correctional institution is made by a juvenile court judge or by the correctional agency on the basis of one or more of the following factors: age, prior record, type of offense, length of sentence, residence. In few, if any, situations are educational needs considered directly in facility assignment.

In many states, before assignment of a juvenile offender is made to a juvenile correctional institution, the offender is processed through a central reception or diagnostic center. These centers traditionally hold offenders for short periods of time (e.g., two weeks) under tight security.

Juvenile institutions are generally not overcrowded. For example, in 1977, though 10 percent of all publicly-operated facilities were occupied in excess of design capacity, 33 percent were used at a rate of less than 70 percent occupancy. The average time of confinement in juvenile correctional institutions generally falls between four to seven months. The maximum time served for a particular offense does not exceed two years, but time served may be extended as a result of offenses committed while in the facility. Recidivism rates are generally high among juvenile offenders, and thus, many juvenile offenders are literally in and out of juvenile correctional institutions during their adolescent years. In contrast to many adult correctional institutions, most juvenile facilities do not segregate offenders by security classification. Where this type of segregation does occur, it is usually limited to the living areas of the facility, and only in a comparatively few instances does segregation extend to participation in education programs.

In virtually every state, elementary and secondary education programs are offered for students below the compulsory school attendance age (e.g., 16). In some states, offenders above the compulsory attendance age are required to enroll in the education program unless they have obtained a high school diploma or GED. In other states, school attendance is optional for offenders above the compulsory attendance age. States vary widely in terms of the agency responsible for operating education programs in juvenile correctional institutions. Four organizational systems currently in use to operate education programs in juvenile facilities are:

(1) Direct operation by the state agency that operates the juvenile institution;

(2) Provision of educational services within the facility by the local education agency in which the facility is located;

(3) Provision of educational services within each facility by an intermediate education unit or special school district operated on a statewide basis; and

(4) Provision of education within each facility by a special state correctional education agency separate from the SEA or from the state or local agency that operates the juvenile institution.

Education in juvenile correctional institutions is more often than not the major day time activity for offenders. While many juvenile institutions do have required work details or institutional maintenance work, education is usually offered for at least five hours per day. In this context, participation in education is usually regarded as an expected daily activity and not as a privilege. Disciplinary removal from school for actions outside of the classroom occurs much less often and for a much shorter period than would occur in an adult correctional facility.

Adult Correctional Institutions. In many states, all adult or youthful offenders sentenced for more than one year are assigned to adult correctional institutions. Like juvenile correctional institutions, adult institutions also run the gamut of security classification. Assignment to a particular adult correctional institution is likely to be predicated on prior record and the type of offense committed, and often is left to the discretion of state correctional officials by the sentencing court. In some states, one or more adult correctional institutions have been designated specifically for youthful offenders.

Most adult correctional institutions are under the supervision of a single state correctional agency (which may or may not supervise juvenile correctional institutions) that in most instances also operates the education program within each facility. In reality, the education program in each facility is much more autonomous than would be the case within the schools of a school district. This is particularly true in all but the few states that have established formal state "school districts" for adult correctional institutions. Again, as with juvenile correctional institutions, many states operate short-term central intake or diagnostic centers. In addition, many states operate special pre-release programs in separate facilities for periods of one to six months.

Adult correctional institutions usually are overcrowded, and the number of youthful offenders in these facilities is rising. Generally, youthful offenders make up approximately 20 percent of the population of adult correctional facilities. The average time served for youthful offenders varies greatly from state to state, reflecting differences in penal philosophy.

Segregation of offenders within adult correctional institutions is commonplace. In addition to a so-called "general population", these institutions often have totally self-contained, physically separated units for specific groups of offenders. These units include:

- "trustee units" for offenders who are regarded as exhibiting model behavior;
- "administrative segregation" or other disciplinary units for offenders who are regarded as severe behavior problems;
- "protective custody" units for offenders who, for various reasons (e.g. mental capacity, informer status, law enforcement background), are regarded as particularly at-risk within the instituition;
- health or infirmary units for offenders requiring in-patient medical treatment;
- forensic psychiatric units for offenders requiring in-patient psychiatric care. (These are more often attached to state-operated mental health facilities); and

- Special pre-release units (within the facilities) for offenders about to be released from custody.

The role of inmate work or labor in adult correctional institutions usually differs sharply from the juvenile correctional institution. Inmate "work" (usually in industrial shops, agricultural production, or institutional maintenance) is regarded generally as the major daytime activity of offenders not physically unfit for work. Often education programs are offered as options to freetime or recreation, but not as an option as a substitute for partial or fulltime work.

In most states, the correctional agency responsible for operating the correctional institution also operates the elementary and secondary education program (postsecondary programs are generally operated by nearby higher education institutions). In a few states, special school districts, intermediate educational units, or special state correctional education agencies operate elementary and secondary education programs.

The education programs of adult correctional institutions, thus, differ dramatically from those of juvenile correctional institutions in several important aspects:

(1) Education is generally viewed as a privilege provided to comparatively few inmates, and waiting lists for education are commonplace;

(2) Education is often clearly subordinated to "work" as the main daytime activity of all inmates of the facility;

(3) Disciplinary removal of students from education programs occurs much more frequently and for much longer periods of time, and inmates are often prevented from enrolling in education programs because of their security status;

(4) Space allotted for educational activities is much more limited.

Pre-trial Detention Centers and Jails. State- or locally- operated detention facilities for juvenile offenders exist in most states, and locally operated pre-trial detention centers and jails exist throughout the United States. Adults and youth arrested and awaiting trial in adult criminal courts are routinely held (subject to the bail system of the state) in locally-operated jails or detention centers. For reasons of administrative convenience or because of the lack of other available social service facilities, many juveniles (both suspected offenders and neglected children and youth) are held in these facilities as well.

A report issued by the Children's Defense Fund in 1976 on a visit to 449 jails in nine states revealed that all nine states held children and youth in adult jails and that 38 percent did so regularly as a matter of policy. Four percent of the children and youth held in jails had committed no offense, and another 18 percent had been charged with status offenses. 7/
In 1977 of the 1.3 million juveniles who entered the criminal justice system, 285,000 or 21 percent were held in pretrial detention facilities or jails. 8/

The duration of residence in these facilities before trial varies greatly from state to state, and no reliable average is available. A duration of several weeks is commonplace, and periods of several months are not infrequent. Major factors leading to this variance are bail procedures and hearing backlogs.

Comparatively few juvenile detention centers have different security classifications within the facility. Few jails were reported by the Children's Defense Fund to have educational programs of any kind or recreational facilities. 9/ A few large-scale juvenile detention centers, however, do have full-time educational programs. These programs are usually operated within the facility by the local education agency in which the facility is located. The average stay of juveniles in these facilities can range from a matter of hours to several months.

Publicly- and Privately-Operated Group Homes. The Juvenile Justice and Delinquency Prevention Act of 1974 calls for the diversion of juveniles from the "traditional juvenile justice system" and the provision of "critically needed alternatives to institutionalization:. (42 U.S.C. 5602). In an attempt to comply with this mandate, states have relied increasingly on halfway houses or group homes instead of secure juvenile correctional institutions. The number of residents of public and private juvenile correctional institutions has declined. 10/ In most instances, the educational program for children in these facilities is offered either in the facility (if "secure") or in the local public schools by the local education agency in which the group home is located.

7/ Children's Defense Fund, Children in Adult Jails (Washington, D.C.: Washington Research Project, Inc., 1976), pp. 3-4.

8/ Danile D. Smith, Terrence Finnegan, Howard N. Snyder, Delinquency 1977: United States Estimates of Cases Processed by Courts With Juvenile Jurisdiction (Pittsburgh, PA: National Center for Juvenile Justice, 1980), P. 13.

9/ Children's Defense Fund, Children in Adult Jails.

10/ U.S. Department of Justice, Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1975, p. 6.

Characteristics of Juvenile Offenders

Juveniles committed to public and private juvenile correctional facilities are overwhelmingly male (84 percent), and minorities are represented disproportionately. According to a 1977 survey, black children are two and a half times more numerous among incarcerated children than among the corresponding 10 to 19 year-old age group of the general population. Although Hispanic children constitute only six percent of the 10 to 19 year-old general population, they account for nine percent of the incarcerated population in that age group. The average age of the children incarcerated in juvenile facilities in 1977 was 15 years. 11/

Several research studies conducted in juvenile correctional institutions in various parts of the United States have concluded that the average educational achievement levels of juvenile offenders is substantially lower than that of their non offender peers. The General Accounting Office, which hired consultants to administer educational and diagnostic tests to a statistically representative population of children in Connecticut and Virginia state juvenile correctional institutions in 1975, concluded that "virtually 100 percent of the juveniles tested were significantly behind academically in relation to their age and ability levels." 12/ Although the average age of the delinquents tested by GAO consultants was 16, the children functioned at about the fourth to fifth grade levels academically. 13/

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11/ U.S. Department of Justice, Children in Custody: Advance Report on the 1977 Census of Public Juvenile Facilities, p. 1.

12/ Comptroller General of the United State, Learning Disabilities: The Link to Delinquency Should Be Determined But Schools Should Do More (Washington, D.C.: U.S. General Accounting Office, 1977), p. 18.

13/ Comptroller General, Learning Disabilities, p. 8.

Seven studies of the prevalence of handicapping conditions among incarcerated juveniles have been conducted in recent years. The National Center for State Courts and the Association for Children with Learning Disabilities, which sponsored a joint study of groups of 12 to 15 year-old adjudicated delinquents in three cities, concluded that one-thind were learning disabled. 14/ The GAO study of juveniles in Connecticut and Virginia found that 26 percent of these children had learning disabilities which the GAO consultants called "primary learning problems." 15/ The GAO classified another 19 percent of the students as having "limited academic potential." The intellectual functioning of these students was so low that the students could not be expected to acquire skills above the elementary school level. These students had serious conceptual deficits which were often accompanied by serious perceptual deficits. 16/ The GAO contended that if those students whom they identified as having either primary learning disabilities or limited academic potential were in the public school system, they could be classified as handicapped and would, therefore, qualify for special education programs. 17/

The National Center for State Courts estimates conservatively that the number of handicapped juveniles annually admitted to public and private juvenile facilities is more than 95,000. Similar information regarding the characteristics of youthful offenders and juveniles incarcerated in adult correctional institutions is not available.

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14/ Paul K. Broder and Dorothy Crawford, "The Link Between Learning Disabilities and Juvenile Delinquency: A program Description" (Williamsburg, VA: National Center for State Courts, 1980), p.4.

15/ Comptroller General, Learning Disabilities, p. 8

16/ Ibid., pp. 6, 8.

17/ Ibid., p. 21.

III

## DEVELOPING AN ANNUAL PLAN FOR MONITORING CORRECTIONAL EDUCATION PROGRAMS AND DEVELOPING COLLECTION PLANS AND MONITORING STRATEGIES

In order to carry out the EDGAR requirements for the periodic monitoring of the education programs operated by and within state and local correctional agencies, special education staff of state education agencies should first develop an Annual Monitoring Plan. Such a plan, of course, could be made part of an overall monitoring plan developed by the SEA applicable to the overall monitoring of all education programs for handicapped children operated within the state.

The evolution of implementation at the local level of P.L. 94-142 and the increasing fiscal and personnel constraints on SEA monitoring activities argue strongly for a well-planned, management-by-information approach to monitoring activities. For example, the number of separate correctional education programs within a state may well exceed 15 to 20 and in virtually no instance can any effective monitoring be conducted at the state correctional agency level. SEA resources potentially available for monitoring this comparatively small portion of the overall population of handicapped students, even in the largest SEAs, is unlikely to exceed one full-time person. In addition, the conduct of routine onsite reviews of each correctional program is an extraordinarily expensive activity in terms of staff travel time and travel expenses.

The development of an Annual Monitoring Plan requires the completion of three important tasks:

- Identifying and selecting the correctional education programs to be monitored.
- Establishing Screening Issues and Targeting Criteria.
- Collecting and Analyzing Targeting Information

The remainder of this section consists of a detailed discussion of these tasks which represent the central SEA special education off site monitoring activities addressed by this guide.

Identifying Correction Programs To Be Monitored. Section 300.600(a)(2) of the regulations contains the basic standard for defining the universe of education programs subject to the SEA monitoring requirements established by EDGAR Regulations: "each educational program for handicapped children administered within state, including each program administered by any other public agency. . . ." Thus, any correctional education program operated within the state in which school-age children are enrolled is subject to SEA special education monitoring. Such programs include, at a minimum any program serving children and youth operated in:

* a juvenile correctional institution;

* an adult correctional institution; or

* a pretrial detention center or jail.

These programs may be operated by the state adult and/or juvenile corrections agency local education agency, a special school district or intermediate educational unit, or a separate state agency. The program may also be operated by a nonpublic agency or organize under contract to a public agency.

An inventory of each of these programs operated within the state should be compiled by special education staff. (The Directory of Juvenile and Adult Correctional Departments, Institutions, Agencies and Parole Authorities published by the American Correctional Association lists all adult and juvenile institutions in each state and provides information about location, capacity, average population, and age limits. In addition , a single state juvenile justice planning authority established in order to receive funds from the U.S. Department of Justice's Law Enforcement Assistance Administration should be an excellent source of information concerning the location and nature of detention and correctional facilities within the state.).

In order to select correctional education programs from the pool (i.e., universe of "covered" programs), criteria need to be developed. Random selection is wholly inappropriate because it neither results in all educational programs being monitored within a discrete period of years nor in selection for monitoring of programs which are most likely to have compliance problems. Techniques oriented towards the selection of those correctional educational programs most likely to have compliance problems appear prudent, given the resource demands created by well-organized, indepth monitoring activities and the number of SEA staff generally available to serve as monitors.

Establishing Screening Issues. The first step in developing a data analysis plan for off site monitoring is to identify compliance issues which have three characteristics. First, they must be issues of significant importance within the context of the overall obligation imposed by the P.L. 94-142 regulations. Second, they must be issues which incorporate institutional educational objectives. Third, they must be issues either susceptible to at least partial measurement on a statistically quantitative basis or identifiable through yes/no answers. Least restrictive environment issues, for example, are often readily susceptible to statistical measurement. Questions asking about the existence of particular standards and procedures are more useful for screening purposes than questions seeking descriptive information.

Compliance issues that are particularly susceptible to this type of screening and of particular compliance significance for correctional education programs are:

(1) Barriers, preconditions, or disincentives to the access of handicapped students to overall education program or policies related to their removal;

(2) The existence of program curricular options for handicapped students such as individualized, specially designed instruction and access to regular and/or special vocational education, regular and/or adapted physical education, or bilingual special education;

(3) The components of any individualized evaluation conducted by central diagnostic or intake center;

(4) The existence of procedures for the transfer of student records from and to local education agencies and correctional institutions;

(5) Under-identification of mentally retarded, learning disabled, and seriously emotionally disturbed offenders;

(6) Limitations on the time available for instruction;

(7) Isolation of handicapped students in self-contained education programs;

(8) The existence of surrogate parent procedures utilizing person not in the employ of the correctional agency.

Establishing Targeting Criteria. Once the screening issues have been determined, targeting criteria must be established. Targeting criteria are composed of the specific items of information which must be analyzed in order to rank correctional education programs in terms of a particular screening issue. For example, for the screening issue "under-identification of learning disabled offenders," the information to be used might be the overall enrollment of learning disabled students in a particular program and the learning disabled student enrollment in the public education programs within the state. In this instance the strategy for ranking correctional education programs would probably be the degree of disparity between the composition of the two groups (e.g., the degree to which the percentage of learning disabled students enrolled in the public education programs of the state exceeds the percentage of learning disabled students enrolled in the correctional education program).

In developing targeting criteria, the special education staff should use as its primary data source information already collected and available from a variety of sources such as:

- Applications prepared by correctional education programs and submitted to the SEA to receive funds under P.L. 94-142, P.L. 89-313, the Title I Neglected Education Act of 1963, etc.;
- P.L. 94-142, P.L. 89-313, or Title I Neglected and Delinquent "child count" information;
- Information collected during SEA school accreditation visits (e.g., discription of the types of programs offered);
- Information reported by correctional education programs in order to apply for state special or regular education funds (e.g., teacher/pupil ratios; staff trends;) and;
- Information submitted by other public agencies to the state legislature in support of education budget requests.

After the development of suitable screening criteria suitable for the correctional education programs within the state, a "triggering factor" or significance measure signifying a legally significant degree of difference should be developed for each criterion (monitoring question). For the example, "under identification of learning disabled students" more than 10 percent deviation between the composition of the two groups might be an appropriate targeting criterion. The importance of the significance measure would then be that correctional education programs with "under-representation" in the enrollment of learning disabled students of less than 10 percent would be disregarded, whereas correctional education programs with deviations above 10 percent would be listed in descending order (i.e., greatest variation first) on a "worst-to-best" list created for each criterion. The significance measure, thus, acts, as a threshhold.

Collecting and Analyzing Targeting Information

Because much of the information used to formulate the targeting criteria is already in the possession of the state agency, most of the data collection problems involve the merging of data from different sources in order to permit comparative analysis. For example, the listing of correctional education program "school names" in different data files may vary, as may the headings used to record information. Where all needed information is not readily available, structured telephone interviews can be used to gather the remaining items. If non-numerical information is collected, a particular answer, itself, can represent a triggering factor. Where a series of yes/no type questions are asked , the answer can be quantified (e.g., yes=0, no=1) and combined in order to establish both a single criterion score and a meaningful significance measure.

The final step in the data analysis process consists in ranking all of the districts and institutions in the screening universe from "worst to best" on each targeting criterion established. [The names of correctional education programs reporting information below the significance measure would not be included.]

After worst-to-best lists have been established, screening criteria must be weighted in order to establish a final single list. Weighting is a device used to allow the staff to assign more priority to one compliance issue screened than to another. The following example may be helpful to illustrate the process:

Rankings

| | Criterion 1 | Criterion 2 | Criterion 3 |
|---|---|---|---|
| (1) | Program A | Program B | Program C |
| (2) | Program B | ----- | ------ |
| (3) | ------ | ----- | Program B |
| (4) | ------ | Program C | Program A |
| ... | | ----- | ------ |
| (16) | Program C | Program A | ------ |

If even weighting were used to create an overall list, the weights would be calculated as follows:

$$\text{Program A} = \frac{1 + 16 + 4}{3} = \frac{7}{}$$

$$\text{Program B} = \frac{2 + 1 + 3}{3} = \frac{2}{}$$

$$\text{Program C} = \frac{16 + 4 + 1}{3} = \frac{7}{}$$

Thus, on the overall ranking list, Program B would be ranked 2nd, and Programs A and C would tie for seventh.

Now, assume that criterion 3 (e.g., barriers to access) was considered significantly more important than the other two factors. As a result, a weight of 3x might be assigned to that criterion. In this instance, the overall calculations would be:

$$\text{Program A} = \frac{1 + 16 + 4 + 4 + 4}{} = 5.8$$

$$\text{Program B} = \frac{2 + 1 + 3 + 3 + 3}{} = 2.4$$

$$\text{Program C} = \frac{16 + 4 + 1 + 1 + 1}{} = 4.6$$

The effect of 3x weighting on criterion 3 would thus be to move program C significantly ahead of Program A on the list. However, the weight was only an "influence", in that Program B still retained its overall position by a significant margin.

Once weights have been assigned (or not assigned), an overall ranking of correctional education programs can then be established.

After the establishment of a rank-order list of correctional education programs, two steps remain in order to create a list of correctional education programs to be monitored during the next year:

- List all correctional education programs which have not been monitored during the preceding two years; and
- Add to this list any correctional education program listed in the highest third of the rank-order list (and not already on the triannual review list).

This procedure will accomplish two important objectives: First, a balance will be struck between the requirement of periodic monitoring of all education programs and the need for focusing scarce staff resources on high priority compliance problems. Second, the appearance of a correctional education program on both the triannual review list and the targeting criteria rank-order list will assist in focusing monitoring activities and determining in what instances on site monitoring strategies are appropriate.

## IDENTIFYING SPECIFIC COMPLIANCE ISSUES FOR IN-DEPTH MONITORING

An important first step in selecting specific compliance issues for the in-depth monitoring of each correctional education program is definitional. As used in this manual, the term "compliance issue" means a legal obligation imposed under P.L. 94-142 and/or its implementing regulations. The following is a partial taxonomy of compliance issues or areas to be monitored which are relevant to correctional education programs:

A. Right to Education
B. Child Identification, Location, and Evaluation
C. Individualized Education Programs
D. Procedural Safeguards
E. Confidentiality
F. Protection in Evaluation Procedures
G. Least Restrictive Environment
H. Comprehensive System of Personnel Development (CSPD)

Compliance issues which should be included in a particular monitoring review are:

- Any of the eight screening issues used for the generalized off site monitoring of all correctional education programs (as described above), where the particular program was "suspect" based on the application of the targeting criterion (e.g., high degree of isolation of handicapped students);

- Any compliance issue regarded by SEA special education staff as unsusceptible to screening but of sufficient overall importance or likelihood to warrant general inclusion in all monitoring reviews (e.g., appropriateness of IEPs); and

- Any compliance issue alleged in complaints filed with the SEA against the particular correctional education program

The compliance issues derived from each of these sources should then be listed as a preliminary compliance issues framework for the monitoring activity.

Because of the unusual characteristics of education programs operated in correctional settings and the corollary need in certain areas for SEA policy clarification, a brief discussion is provided below of the unique compliance issues and dimensions incident to correctional education programs.

## COMPLIANCE ISSUE A. RIGHT TO EDUCATION

Two basic compliance obligations which form the structure of the right to education are particularly relevant to the education programs:

1. All children determined to be handicapped and in need of special education and related services are provided a free, appropriate public education?

2. Each of the related services described in 34 CFR 300.13 is available to handicapped students?

The implications of the correctional education setting for each of these obligations is addressed separately.

Obligation 1: Provide a Free, Appropriate Public Education to all Handicapped Children

The settings and operations of correctional facilities give rise to monitoring implications in four somewhat unusual areas (subissues) which should be explored by SEA special education monitoring staff reviewing the provision of a free appropriate public education.

a. A "special education" program actually exists in the institution (i.e., there is specially designed instruction to meet the unique needs of a handicapped child)?

b. No barriers, preconditions or disincentives exist for the enrollment of children and youth in education programs which prevent access of a handicapped offenders to a free, appropriate public education.

c. The provision of a free, appropriate public education to handicapped students is not frequently interrupted or terminated.

d. Living area assignments made within the correctional facility or security classifications do not preclude attendance in education programs or in special education programs.

A brief discussion of each of the compliance subissues follows:

a. Sub-issue: Existence of Special Education Programs or Services - information should be requested in order to ascertain whether any special education programs or services exist within the correctional education program. It is not unusual in juvenile correctional institutions for no formal program of special education to be in place. Handicapped juvenile offenders may, in lieu of special education services, be routinely included in special remedial programs or may simply be offered participation in a standardized regular education program which permits some individualization of instruction. Inquiry should be made about whether any special vocational education or physical education programs exist. It may be that no vocational education instruction is available for any offenders and that the institution's recreation program constitutes the program of physical education. Similarly, bilingual special education programs are virtually nonexistent, and limited or non English speaking handicapped students may be required to choose between completely separate special education and bilingual education programs.

In adult correctional institutions, there is much less likelihood of finding a defined special education program in place or even the existence of special education services. Often all students attending elementary and secondary school programs (whether handicapped or not) may be offered an identical adult basic education curriculum.

Because of the tentative nature of education programs in most pre trial detention centers and jails, the existence of formal special education programs and/or special education services is even a dimmer prospect. This monitoring question is, of course, directly linked to the fourth screening issue.

-- "The existence of program curricular options for handicapped students such as individualized, specially designed instruction and access to regular and/or special vocational education, regular and/or adapted physical education, or bilingual special education;"

b. Sub-issue: No Barriers, Pre-Conditions and Disincentives for Enrollment in Education Programs - acccess of handicapped offenders to correctional education program particularly in adult correctional institutions, may be prevented or inhibited by a var of correctional policies which vary significantly from state to state. These policies rarely based on educational considerations, but rather reflect the correctional philosc of the institution or system. For example, offenders may not be permitted to enroll in education program until a particular point in time after incarceration (e.g., six month This time barrier may be expanded further by the requirement that the potential enrolle have a "clear record" (i.e., no disciplinary infractions) for a particular period of ti prior to requesting admission. This precondition, particularly with respect to serious emotionally disturbed and even mentally retarded offenders, may constitute a long term permanent barrier to enrollment, depending on whether all disciplinary infractions or c major infractions will preclude enrollment.

Another "access" issue which arises in adult correctional institutions relates to the offender's release date. Some adult correctional facilities permit access to education programs only after a date related to the release date of the offender (e.g., one year prior to release).

Economic and other disincentives to educational enrollment also occur fairly frequently in both juvenile and adult correctional institutions. For example, in juvenile institutions, offenders (including handicapped offenders) above the compulsory school attendance age for the state may be offered the choice of institutional work, for compensated or continued uncompensated school enrollment. Money is an important commodity in a correctional setting and a strong disincentive to continued school enrollment in such circumstances. In adult correctional institutions, compensated institutional work (including industrial shop labor) is often offered to all prospective education enrollees as a mutually exclusive option to continued education. Compensation for work in adult institutions is often significantly higher than in juvenile facilities. In some adult correctional institutions, offenders enrolling in education programs are compensated for participation in education but usually at a much lower rate than for institutional work.

In adult correctional institutions, the process of seeking enrollment should be explored within this monitoring area. In many adult institutions, counselors or committees are responsible for approving the placement or participation of an offender in any treatment program (e.g., industrial shop labor, education, institutional laundry). This counselor or committee could well preclude the access of a handicapped offender to educational programs for a variety of reasons, some totally unrelated to educational needs, such as disciplinary record or scheduling. In jails and other combined pretrial and post sentencing detention facilities which have educational programs, pretrial offenders (as compared with post sentencing offenders) may be precluded from access to education programs.

Information should be collected with respect to time barriers, behavioral preconditions, and disincentives which may be operating in a correctional setting to preclude or discourage handicapped offenders from enrolling. This monitoring question is directly linked to the third screening issue:

-- "Barriers, pre-conditions, or disincentives to the access of handicapped students to overall education program, or policies related to their removal."

c. Sub-issue: No Policies Which Permit Interruption or Termination of Services - information should be collected from both adult and juvenile correctional institutions regarding any policies and procedures which permit the interruption and termination of educational services to handicapped students before such students are released from custody.

Particularly in adult correctional institutions, where education is viewed as a privilege, the access to education for an offender can be withdrawn at any time as a disciplinary sanction for behavior that occurs in school or in the living areas of the instituion. While in most juvenile correctional institutions disciplinary removal tends to be short-term, it may be frequent enough to seriously disrupt the provision of special education services to handicapped students. In adult correctional institutions, disciplinary removal may be long-term (e.g., one year) or permanent for actions which occur outside of the educational environment. Often correctional education personnel are not informed of the reasons for either short-term or long-term disciplinary removal.

Interruptions or termination of services to handicapped students may also occur as a result of correctional policies or facility transfer. As a result of overcrowding, offender behavior, pre release status, or other factors, offenders (including handicapped offenders) may be shifted repeatedly between the different facilities of a state adult or juvenile correctional system. Information should be collected on the transfer of records and immediate access of a shifted handicapped offender to appropriate education in the "receiving facility."

d. Sub-issue: Access of Offenders in Certain Living Areas or Security Classifications - access to education programs and/or special education services in both adult and juvenile correctional institutions may be limited by the living area an offender is assigned to or the offender's security classification.

In some juvenile correctional institutions, handicapped offenders may be assigned to special living units or cottages based on their handicap (e.g., mental retardation), disciplinary record, age, perceived social maturity, or vulnerability, etc. In some situations, the living unit may have a self-contained education program separate from the general educational program of the facility. Often a single teacher is assigned to work in such a special unit, and handicapped students in the unit are not allowed access to the special education program.

In adult correctional institutions, inmate security classifications (usually coupled with segregated living arrangements) may completely preclude participation in education programs or result in the type of limited acccess described above for juvenile correctional institutions.

Obligation 2. Make Available All Related Services

The organization and operation of correctional facilities has a direct impact on the access of handicapped students enrolled in correctional education programs to the related services mandated by 34 CFR 300.13.

There are 13 specific related services described in the regulations:

- audiology
- counseling services
- * early identification and assessment of disabilities
- medical services
- occupational therapy
- * parent counseling and training
- physical therapy
- psychological services
- * recreation
- school health services
- social work in schools
- speech pathology
- * transportation

Because of the basic nature of correctional facilities and systems described earlier, four of these related services have only limited relevance to the correctional setting (noted by Asterisk above). The remaining nine related services can be regrouped as follows:

a. audiology, medical services, physical therapy, occupational therapy, and school health services;

b. counseling services, psychological services, and social work in schools; and

c. speech pathology

Monitoring issues addressing the provision of clusters of related services within the correctional environment will be discussed separately.

a. Sub-issue--Availability of Audiology, Medical Services, Physical Therapy, Occupational Therapy and School Health Services - regardless of the identity of the state or local agency responsible for operating the correctional education program, responsibility for the provisions of this cluster of related services in correctional facilities rests almost always with the treatment program operated by the host correctional agency. Unlike the local public school setting, these services are grouped routinely in both juvenile and adult correctional institutions as "health services." In most instances, an infirmary or other health unit is located within the correctional facility or near by. In some instances, a temporary transfer of an offender to another correctional facility operated by the same agency might be necessary in order to receive the service.

In virtually all facilities, medical services and school health services are available within the facility's health service program. The availability of the full range of audiology services is much less certain, and the existence of physical and occupational therapy services much less likely.

Often educational program staff within the facility may not be knowledgeable about the nature and scope of health services available.

Information should be collected on the existence within the facility (or near by) of each of the types of related services in this cluster or arrangements which would be made if a handicapped offender required such services.

b. Sub-issue--Availability of Counseling Services, Psychological Services, and Social Work Services - the provision of the related services in this cluster is almost always the responsibility of the agency operating the correctional facility. In many juvenile and adult correctional institutions, social workers are the only full-time staff available to provide services. Psychiatrists often visit the facility for a few hours a week (principally to prescribe medication), and licensed psychologists are often available through contracts that provide much less than full-time services. Thus, unlike medical and school health services, individual psychological services for handicapped offenders may not be available or may be so limited as to be inaccessible. Many correctional education programs do not have the services of an educational counselor.

Information should be collected on the existence within the facility of psychological and social work services. At a minimum, the information should include average case loads for both psychologists and social worker.

Requests for information about counseling services should be phrased carefully to distinguish educational counseling from behavior control activities, because many correctional facilities employ counselors for the latter purpose.

c. Sub-issue--Availability of Speech Pathology--Information collection should focus on the existence to the speech pathology service and the average caseload of persons providing speech therapy or other habilitative or preventive services.

COMPLIANCE ISSUE B. CHILD IDENTIFICATION, LOCATION, EVALUATION

There are important monitoring implications for the correctional setting in four area (sub-issues) of child identification, location and evaluation.

1._____ All relevant agencies are involved.
2._____ The activities are ongoing.
3._____ All identified children are evaluated.
4._____ Activities include systematic in-school procedures
Examples of procedures that may be used include:
screening, review of truancy, absentee information,
suspension/discipline information, non promotions

A brief discussion of these four compliance sub-issues follows.

1. All Relevant Agencies Are Involved. The most consistent and serious failure to involve all relevant agencies in the initial child identification process clearly relates to the absence of any involvement by persons from local schools which the offender previously attended. This problem is complicated in adult correctional institutions by the fact that no educational records or history of the offender is usually available except from an interview with the offenders. Offenders are often reluctant to provide information about prior special education enrollment because of the fear of stigmatization.

In contrast, juvenile correctional facilities should have access to the offender record compiled for the juvenile court which usually at least identifies the LEA and school last attended by the offender. Information should be collected carefully about the existence and efficiency of any procedures in place to collect student records or other child identification information. This monitoring question is directly linked to the fourth compliance issue recommended for screening:

"The existence of procedures for the transfer of student records from and to local education agencies"

2. Activities Are Ongoing. Because of the existence of central diagnostic and intake facilities in many state juvenile and adult correctional facilities, staff of the agency operating the correctional facility obviously are involved in the initial identification of handicapped offenders. Less clear, however, is their ongoing involvement. In many correctional education programs, it appears that assistance in child identification activities is not provided routinely to the education program from staff of the host agency not assigned to education (e.g., cottage parents, correctional counselors). Information should be collected about the child identification process used after intake and/or facility assignment within the facility but outside of the correctional education program.

3. All Identified Children Are Evaluated
4. Systematic Inschool Child Identification Procedures.

In most correctional facilities and correctional education programs, initial identification and evaluation activities are merged into a single, diagnostic intake process (whether centralized or not). In adult correctional institutions, this is often the only formalized individual evaluation offered, although educational staff may well augment a cursory diagnostic/intake procedure with a quick, self-administered educational achievement test. Post intake identification procedures are often ad hoc and not linked to a subsequent individual evaluation. Because of the high incidence rates in offender populations, monitoring questions should specifically request information about identification procedures used by intake staff and by education program staff to refer offenders suspected of being mentally retarded, learning disabled, or seriously emotionally disturbed for individual evaluation and the standards, if any, used to determine when such a referral should be made.

COMPLIANCE ISSUE C. INDIVIDUALIZED EDUCATION PROGRAMS

Four IEP subissues are affected directly by the unique operation and environment of correctional education programs:

1._____ The IEP is in effect prior to provision of services.

2._____ An IEP meeting is held within 30 calendar days of a determination that a child needs special education and related services.

3._____ Participants include:

a. _____ A representative of the public agency.

b. _____ The child's teacher.

c. _____ The child's parent(s).

d. _____ The child (where appropriate)

e. _____ Evaluation personnel (qualified to provide or supervise special education.

f. _____ Others at the discretion of the parent(s) or agency.

••••

4._____ The IEP contents describe:

a. _____ The child's present performance level.

b. _____ Goals and objectives.

c. _____ The special education and related services to be provided to the child.

d. _____ The extent to which the child will participate in regular education programs.

e. _____ Dates of initiation and duration of services.

f. _____ Objective evaluation criteria and procedures.

The following nine observations about the correctional education environment of most programs may assist SEAs seeking to develop an effective monitoring strategy for each of these compliance subissue areas:

1. The period of enrollment of handicapped offenders in the correctional education programs of pretrial detention centers and jails is usually both short-term (i.e., less than 90 days) and indefinite;

2. The period of enrollment of handicapped offender in the correctional education programs of juvenile correctional institutions is usually less than one school year and rarely in excess of two school years;

3. Parent involvement in all correctional education programs is extremely limited, and states vary significantly as to whether parents retain any rights in connection with education while their children are incarcerated;

4. Diagnostic evaluation activities are often conducted at central diagnostic intake centers which are geographically remote from the correctional education programs;

5. Access to the local education records of students in correctional education programs is rare and participation of the student's prior teachers is extremely unlikely;

6. In many adult correctional institutions and some juvenile institutions, work assignments often take precedence over education and the time available for participation may be sharply curtailed;

7. The vast majority of handicapped students enrolled in correctional education programs will never return to local elementary and secondary school programs;

8. Security and space considerations within all types of correctional facilities often seriously constrain the student instructional capacity of the correctional education program; and

9. In many correctional education programs, students are assigned to one of several self-contained, mutually exclusive instructional programs (e.g., remedial, bilingual, vocational, special education) with little opportunity for multiple participation; in other programs (particularly in adult correctional institutions) all students (including handicapped students) are assigned to a notch in a single, adult basic education curriculum.

Discussion

The first two observations, have significant implications for the collection of monitoring information related to the IEP process. Rather than simply collecting or reviewing information about the number of handicapped students enrolled at a given date, information also should be collected with respect to the number of handicapped students served during a 12 month period. In addition, because of the issue concerning frequent interruptions in the provision of services, information about the average number of days handicapped students were "out of school" should also be collected. These two observations also have major implications for the feasibility and desirability (particularly in pretrial detention centers and jails) of requiring that the IEP be in effect prior to the provision of services and permitting up to 30 days for the IEP meeting where that time frame may actually exceed the average length of enrollment of handicapped students. In addition, the feasibility of including the date of duration of services may be impossible in detention centers and at least difficult in juvenile correctional institutions.

Observation three bears directly on the feasibility and legality of focusing monitoring attention to parent participation in the IEP conference. Similarly, observation (4) makes it difficult for evaluation personnel to participate in the IEP conference. Observation five also bears directly on the feasibility of the participations of any of the child's prior teachers in the IEP conference.

Compliance sub-issues related to the content of IEPs peculiar to correctional education programs are raised by observations 6-9. Observation (6) is linked directly to screening issue (6) "Limitations on the time available for instruction," and observation (7) certainly should have a direct bearing on the appropriateness of IEP goals and objectives. Observations (8) and (9) suggest strongly that monitoring questions related to the IEP process explore the constraints on the special education services which may be actually available for handicapped students because of rigid program organization (often tied to federal funding sources) or space limitations. The earlier discussion in this section of the availability of related services is also relevant to that subissue.

COMPLIANCE ISSUE D. PROCEDURAL SAFEGUARDS

There are two principal issues and numerous compliance subi-issues under the Procedural Safeguards compliance area that are relevant to the operation of correctional institutions:

1. All relevant state agencies have implemented procedures consistent with SEA guidelines.

2. Procedures are in place which assure:

   a. _____ Opportunity to examine records.

   b. _____ Right to an independent evaluation.

   c. _____ Right to an impartial due process hearing.

   d. _____ An impartial hearing officer.

   e. _____ Hearing rights.

   f. _____ Right to a hearing decision appeal.

   g. _____ Right to an administrative appeal, impartial review.

   h. _____ Right to pursue civil action.

   i. _____ Adherence to timeline/convenient hearings and review.

   j. _____ The availability of surrogate parents, if needed.

   k. _____ The knowledge and right to file a formal complaint.

Many correctional education programs have not developed separate procedural safeguard procedures (subissue 2) but instead have used existing institution wide offender grievance procedures. This "grafting" has occurred widely in both juvenile and adult correction institutions, and such institutional due process procedures are often traceable to prior offender rights litigation within the state. As a result of the somewhat confusing overlap of due process procedures

related to offender grievance (sub-issues 2, K) monitoring questions in these areas should be prepared only after careful review by SEA lawyers of state and federal due process procedures made applicable to the institutions by statute, regulation, or court decision.

In light of the discussion of compliance issues related to evaluation elsewhere in this section and the security considerations related to the conduct of an outside evaluation, information should be collected about the procedures used by the correctional education program to provide an independent evaluation if requested by a handicapped or non handicapped student.

The question of the designated surrogate parents within the correctional setting raises major questions of federal and state law. Caution is recommended in preparing specific monitoring questions and in interpreting and applying P.L. 94-142 requirements. An "Analysis of the Legal Issues Involved in Implementing the Surrogate Parent Requirement of P.L. 94-142," prepare for the Bureau for the Education of the Handicapped by the Federation for Children with Special Needs, Inc. in 1979, reported that the states vary widely on the role of the natural parents in exercising rights on behalf of adjudicated youth. These compliance sub-issues are linked directly to another recommended for screening issue:

> "The existence of surrogate parent procedures utilizing persons not in the employ of the correctional agency."

COMPLIANCE ISSUE E. CONFIDENTIALITY

There are three unusual compliance sub-issues related to confidentiality requirement that appear to arise regularly in the context of correctional education programs:

First, the question of the authority of parents and surrogate parents under state a federal law to inspect and review records should be resolved before monitoring questions be developed and information collected concerning access to and the amendment of educational records.

Second, in certain adult correctional institutions "trustee" offenders are provided access to educational records containing personally identifiable information. Before monitoring questions are developed, state law questions must be resolved concerning whet a "trustee" offender working in the facility is an "official" of the correctional agency entitled to access to personally identifiable information and/or whether the correctiona agency can consent (as the "parent") to such access.

Third, state law should be reviewed on the question of supervening offender due process rights before monitoring questions are developed on the conformance of the correctional education program with mandated hearing procedures.

## COMPLIANCE ISSUE F. PROTECTION IN EVALUATION PROCEDURES

There are two general categories of compliance sub-issues under the protection in Evaluation Procedures issues;

1. The content of the individual evaluation conducted and the composition of the evaluation teams; and

2. The procedures used to determine educational placement and the composition of the persons making the placement decisions.

Each of these major subissue clusters will be discussed separately in terms of the unusual compliance issues raised by the correctional environment.

Sub-issue 1. Content of Individual Evaluations and Composition of Evaluation Teams. The use by a juvenile or adult correctional institution of a centralized or decentralized intake/evaluation process common to all offenders (including those not suspected of being handicapped) as the sole or primary procedure for individualized evaluation raises major compliance questions about both the thoroughness and individualized nature of the evaluation. In addition, the classroom observation required before the evaluation of a child suspected of being learning disabled would be impossible at the intake point. Information should be collected to determine the numerous required components of the intake evaluation and whether those components can be and are supplemented to provide more detailed information on offenders suspected of being handicapped. This compliance sub-issue is directly linked to a screening issue identified in Part III:

> "The components of any individualized evaluation conducted by central diagnostic or evaluation centers."

Similarly, because of the existence of a generalized intake/evaluation process, monitoring questions should be developed to ensure that the evaluation is conducted by a properly qualified multi-disciplinary team. With respect to the evaluation of children thought to have specific learning disabilities, information should also be collected with respect to the existence and content of written evaluation reports and the use of proper evaluation.

In addition, information should be requested during the monitoring process as to the procedures for scheduling an individual evaluation of an offender after the intake process has been completed. With few exceptions, monitoring questions related to triannual reevaluations should be confined to correctional education programs operated in adult correctional facilities.

Sub-issue 2. Placement Procedures and the Composition of Placement Teams. In general, the development of monitoring questions related to the placement process are affected by the same basic factors about the correctional education environment described above in the context of individualized education programs. Again, these factors as well as the generalized intake evaluation procedure and the inaccessibility of prior school records constrain the variety of sources from which information can be drawn, the composition of the group of persons making the placement decision, and the ability in pretrial detention facilities and juvenile correctional institutions to base initial placement decisions on the IEP.

## COMPLIANCE ISSUE G. LEAST RESTRICTIVE ENVIRONMENT

There are several significant implications of the correctional education setting in both juvenile and adult correctional institutions for the monitoring of the continuum of alternative placements requirement within the general obligation to provide education in the least restrictive environment.

1. A continuum of alternative placements are available which include:

(a) _____ Regular classes.
(b) _____ Special classes.
(c) _____ Special schools.
(d) _____ Home instruction.
(e) _____ Hospitals and institutions.
(f) _____ Supplementary services provided in conjunction with regular classroom instruction.

First, instruction in special schools is generally not feasible as an alternative placement in correctional settings.

Second, the concept of "home instruction" could be extended to apply to instruction provided to handicapped students placed in isolation or administrative segregation units.

Third, given the limited availability of space, staff, and program options in many correctional education programs, supplementary services provided in conjuction with regular classroom instruction may be nonexistent or severely limited.

Fourth, the creation of secure areas within the facility (with self-contained education settings) may have a substantial impact (both positively and negatively) on the degree to which handicapped students are placed in settings with non handicapped peers. These monitoring questions are all linked directly to a screening issue identified above:

> "Isolation of handicapped students in self-contained education programs."

Each of these implications should form the basis for specific monitoring questions aimed at eliciting the actual continuum which exists within each correctional education program.

## COMPLIANCE ISSUE H. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Information should be collected to ensure that each monitored correctional education program is participating fully in the development, review, and annual updating of the state's comprehensive system of personnel development and the inservice personnel development programs initiated by the SEA.